



SPEECH

OF

MR. R. TOOMBS, OF GEORGIA,

ON THE

OREGON QUESTION.

Delivered in the House of Representatives U. S., January 12, 1846.

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MR. R. T. LOOMIS OF GEORGETOWN

OFFICE OF THE ATTORNEY GENERAL

STATE OF OREGON

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SPEECH.

House of Representatives of the United States, January 12th, 1846.—The Committee of the Whole on the state of the Union having under consideration a resolution reported by the Committee on Foreign Affairs, entitled "A resolution of notice to Great Britain to annul and abrogate the convention between Great Britain and the United States, of August the 6th, 1827, relative to the country on the northwest coast of America, westward of the Stony mountains, commonly called Oregon"—

Mr. TOOMBS obtained the floor, and proceeded to address the committee as follows:

Mr. CHAIRMAN, I have a strong opinion in favor of the adoption of the resolution now before the committee, or some other similar in its character. Intending that my vote upon it shall be the true record of my opinions; I have listened attentively to the debate, hoping to be instructed by it. That opinion, sir, is unshaken; and I am the more desirous of giving the reasons which have controlled my determination upon this question, because I do not wholly agree with those who act with me upon it, and I am utterly unwilling that my vote shall be placed upon the ground chosen for me by the opponents of this resolution. The two important questions to be here considered are: 1st. What rights have the United States in the Oregon territory; and 2dly. Is it expedient and proper to begin the assertion of those rights by terminating the joint convention of 1827, according to its own provisions. It has suited the convenience of the opponents of this resolution, to maintain, with great earnestness, that its adoption would inevitably involve this country in a war with Great Britain. Whether it will or not, is not so much a question to be considered by us, as whether it would give just cause of war. Being satisfied that its adoption would give no just *cause* of offence to any nation, and that it is necessary and proper, for the maintenance of the just rights of the country, I am prepared to adopt it. Wars are often, indeed most usually, produced among civilized nations by the violation of treaty stipulations; the simple exercise of rights and powers secured by treaty, in the manner pointed out by the treaty, is a new cause of war, for the discovery of which we are indebted to the opponents of this resolution. If gentlemen mean only to argue, that measures may or will be adopted, after

the abrogation of this convention, which will endanger the peace of the country, I have only to reply, that we will consider them when they shall be presented. It is true that it has not been alleged that the passage of this resolution will give just cause for war, but it has been argued, and in some cases assumed, that such will be the inevitable consequence; and hence the arguments offered by the opponents of the resolution would generally have been equally appropriate upon a resolution declaring war. This direction, which the debate has been adroitly made to assume, has given an advantage to the opponents of this resolution, to which their position does not entitle them. And that advantage is not confined to this Hall. The newspapers, those potent manufacturers as well as exponents of public opinion, have seconded the cry raised in these walls for peace, peace. And their appeals to the fears and pockets of the people are not unfrequently mixed up with denunciations of those who have indicated their determination to support the resolution, and in that way to begin the assertion of the rights of the nation in Oregon, rights undisputed in this Hall, but admitted on all sides to be "clear and unquestionable."

I am prepared to yield nothing to this mode of treating the question. I, too, am the friend of peace—honorable peace. I yield to none in deep and heartfelt appreciation of its blessings. Honorable peace is the mother of all the virtuous hopes of humanity, of progress, of political and social truth, of civilization, of true national greatness; but dishonorable peace is "the body of death," chained to the national character; like "the leprous distillation of the fabled Upas tree," it silently drops its deadly poison upon the nation's heart and withers and paralyzes it. In comparison with such a peace, war, with its acknowledged horrors, would be a national blessing. I admit it to be the highest duty of every public man, by all proper means, to preserve honorable peace. What is honorable peace? As some gentlemen who have preceded me, while eloquently eulogizing the blessings of peace, have been indifferent to this distinction, and have not troubled the House with any expression of their opinions upon this distinction, I will define what I mean by honorable peace. It is peace maintained without the surrender of any *important* national right, by observing justice and practising good faith to all nations; within these limits I will go "as far as he that goes farthest." I will not transcend them. I shall endeavor to govern my conduct on this floor towards all nations by these principles; from them I shall not be driven, either by clamour from within or clamour from without; nor yet by the oft-repeated argument of the tens of thousands of British cannon, riding upon their ocean homes, upon every wave, and looking out their sul-

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len defiance from British forts upon every continent of the earth, and almost every isle of the sea. These are not the arguments which ought to control the action of a representative of the American people on this floor.

Sir, the time has been when inactivity (on this question) was masterly, was wisdom. But it is not now. That day has passed. It is, perhaps, to be regretted that it has passed, and that a different direction had not been given to it. It is deeply to be regretted that a grave and difficult question of territorial rights should have been dragged into the arena of party politics. The nation may have other and abundant reasons to regret the conduct of this question. But my business is not now with the past; the present position of the question must be the basis of our action upon it. The current of events has brought us to a point where we must act, and act wisely and promptly; where, if we cannot advance with safety, we cannot retreat with honor or advantage to the nation. "Masterly activity," is now demanded by the crisis. By this course alone can we retrieve the errors of the past and secure success for the future. What shall that action be? Perhaps the fate of a magnificent empire may depend upon your answer. But it must be decided, decided now, and for the nation, and not only for the nation of to-day, but for the nation throughout all time, for future ages and unborn millions. Let us, then, elevate ourselves, as near as may be, to the magnitude of the question. Let us pity, (if we can repress the uprising of more natural, but less charitable feelings,) the imbecile attempt which has been made to embitter this discussion by the introduction of questions of sectional interest and sectional strife, and bring whatever of virtue, whatever of wisdom, whatever of knowledge, whatever of patriotism, we may command, to its consideration and decision. Then, whatever may be the consequences of our action to ourselves or the country, we can stand erect, with consciences "void of offence towards God and towards man."

The question of title has been vaguely and unsatisfactorily treated of in this debate. The "pressure from without" has been evidently felt and acknowledged in this part of the discussion. A manifest disposition to evade it, to shun it, has exhibited itself on all sides of the House. I would content myself, if I believed the position to be true, with the general acquiescence in the goodness of our title to 54° 40' north. It would greatly strengthen my position on the second proposition I have laid down for discussion. I prefer waiving that advantage, and giving my own opinions upon the title, however unpalatable they may be to the House or the country. Our title to the whole of Oregon has certainly not been denied by any gentleman who has preceded me in this debate. Those gentlemen of the Demo-

cratic party who have spoken in favor of giving this notice, have generally affirmed the goodness of our title to 50° 40' north, but have contented themselves with the evidence of that fact furnished by the Baltimore resolutions and the President's inaugural speech, without further inquiry. Those of the same party who oppose the notice, perhaps with a prudent fear of such high authority, have contented themselves with the expression of a desire to acquire "all Oregon," and pointing out their mode of consummating that object, without the expression of any opinion upon the present rights of the country. My Whig friends who oppose the notice, have also shown an indisposition to encumber their position with any expression of opinion as to title. They too are for "all Oregon," but when and how it is to be obtained is left in convenient ambiguity.

Both the British and American diplomatists have rather directed their arguments each against the title of his adversary, than in the support of their own. The reason of this may be found in the fact that it is much easier to show who has not title in Oregon than who has. Test the title of both countries by the principles of international law, and both are exhibited before the world in the ridiculous attitude of quarrelling about that which belongs to neither, but is as yet the common property of mankind. And here lies the whole difficulty of the negotiation; so long as it shall be regarded as a question of title, an amicable adjustment is impossible.

I have not been able to bring my mind to the conclusion, that our title to the whole, or any part of Oregon, is either "clear or unquestionable." And I shall proceed to give briefly the facts and reasoning upon which my opinion is founded. The facts are few, and not obscure; they are generally admitted by the advocates of both sides of the question. That part of the northwest coast of America now called Oregon was undoubtedly first discovered by the Spaniards. These discoveries began with Juan de Fuca, in 1592, and were followed by other Spanish navigators, at different periods, up to 1774 and 1776, when the whole coast was carefully explored by Perez and Haceta. Spain claimed title to it by virtue of these discoveries, and performed various acts of "taking possession," according to the usages of the times, long before this coast was visited by the navigators of any other civilized country. This claim of title, not being acquiesced in, never ripened into a title by prescription, and it was inchoate and imperfect until completed by actual "settlement." "Settlement" is necessary to perfect a title by discovery, according to the most generally received authorities upon international law. And the principle appears to me to be a sound one. It is founded in natural equity. That which has no owner, natural equity

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gives to him who first takes, retains, and uses it. Mere discovery, without occupation, gives no perfect rights, either by the law of nations or natural equity. And that occupation must be continued; for, after abandonment, it is again open to him who chooses to enter and occupy, and good title is thereby acquired, notwithstanding the first discovery and occupation. By applying these sound and obvious principles to the title claimed by Spain, and by us through her, its defects must be apparent to every one. Spain made no "settlement" upon any part of the northwest coast of America between 42° and $54^{\circ} 40'$ north. It is true that she resented the temporary occupation of a trading post in this territory by Meares, and ousted him in 1789, and continued in possession of that post until 1795. From that time hitherto she has never had possession of an inch of that territory; therefore, if she ever had any rights there, they were lost by her abandonment of the territory. This was the state of her title in 1819, when she gave us a quit claim to the country. She had nothing to convey, and we therefore took nothing by the conveyance. I am warranted in the conclusion, that this was the opinion of our Government in 1818; for, at that time, in utter contempt, but with full knowledge, of the claim of Spain, we offered to divide the whole country with Great Britain. And, what is still more conclusive, we were, at that very time, treating with Spain, among other things, for the purchase of this title, and did actually acquire it, by treaty, within four months after the offer was made; and five years after having acquired that title, we again made the same offer to Great Britain.

Yet now we have the boldness to say, in the face of these facts, that this Spanish title is "clear and unquestionable." This is the ground assumed by our Government, for we do not pretend to have any other title but that of Spain to any part of this territory north of the country drained by the Columbia river. And it has been said, in very respectable quarters, that our title "to the whole of Oregon" (to $54^{\circ} 40'$) is "clear and unquestionable." This Spanish title will require the endorsement of a victorious army to make it available. It is worthless by itself.

The American claim is based upon the entrance of Gray into the Columbia river, the explorations of the main branches of that river by Lewis and Clark, and the settlement at Astoria. Grey did not discover the Columbia river; the credit of that achievement is acknowledged to belong to the Spantard Haceta. Exploration, of what was before discovered, is not recognised by any principle of international law as a means of acquiring title. It could, in no event, stand on a better foundation than discovery without settlement. The settlement at Astoria presents our strongest claim to the

country affected by it. But it is to be regretted that this claim of title is not free from difficulties. Whether the establishment of a trading post in a country unoccupied by civilized man is such a "settlement" as satisfies that principle of international law, which requires actual settlement to perfect a title by discovery, is a question, upon principle and authority, more than doubtful. And it is worthy of consideration, admitting that such a settlement does satisfy that principle—to what extent of territory does it give good title? I am not prepared to admit that it confers any title whatever. The principles upon which these doctrines of international law are based, are plain, simple, reasonable, and just. The earth was made for the use of man—whatever portion of it is at any time not appropriated to his use by actual occupancy, or municipal law, rightfully belongs to him who first takes, uses, and subdues it. Such a settlement does not satisfy this great principle. The idea that the building of a hut, for the temporary protection of trappers, and half a dozen sheds for the reception of the skins of animals, gives title to, and excludes the rest of the human race from a country 600 miles square, is a mockery of the common sense of mankind, and a libel upon the goodness and the providence of God. Contiguity is the only remaining ground of American title. It is not insisted that it gives a perfect right. At best, it is an interpolation upon the international code. It means simply that the territory in dispute belongs to nobody, but that it adjoins some that we own. It is based upon the idea that nobody owns the land. So all other titles must be vacated before this one acquires vitality. By acknowledging this to be a ground of title, the country would be divided between this country and England by the 49° parallel of north latitude. Such is our title. But, defective as it may be, it is still better than that of England. It is unnecessary to dwell upon the English title. Every defect in our own applies with equal or greater force to that of England. She has not even a decent pretext, laying contiguity out of the question, to any portion of the country drained by the Columbia river. Drake came after Juan de Fuca; he may have seen the coast at about 48° north latitude, though even that fact is disputed. Cook's voyage to that coast was in 1778, more than two years after the explorations of Perex and Haceta, and Vancouver at a still later period. She therefore never had any rights by discovery on the coast. McKenzie explored Frazier's river, and British traders established a trading post on that river.

The establishment of this post on Frazier's river is obnoxious to the same objections which have already been urged to ours at Astoria. It confers the same rights upon Great Britain to the country washed by that river, as ours

at Astoria does upon the United States; and, excluding title by contiguity, it is the sole basis of British title to any portion of Oregon. I here leave the question of title.

The result of my investigation is, that Oregon is, as yet, unappropriated by civilized man; that no nation has, as yet, acquired a good title to any part of it. We have much stronger pretensions to it than Great Britain—both by the number and quality of our imperfect titles. Under this state of the question, I approve the action of the President in offering to settle the question by continuing our boundary, on the 49th parallel, to the Pacific. The question ought to be treated exclusively as one of boundary, and settled by negotiation, and settled at once. England has no right to demand, and I would not yield by negotiation, an acre south of 49°. Whatever may be our title, or whatever our claims, the public interest, in my opinion, demands that this joint convention of 1818 should be terminated in some form.

The gentleman from South Carolina (Mr. RHETT) argues that it is incumbent on those who are in favor of giving this notice to show what harm the convention has done, and to give reasons for its termination. I shall proceed to offer the reasons for giving it which have controlled my mind, though I do not admit the correctness of the rule laid down by that gentleman. The general rule is, that the laws and exclusive dominion of every country should be co-extensive with its territorial rights. This convention is an exception to this rule; and it is the duty of those who support the exception to show sound and conclusive reasons for it. The reasons which induced the adoption of the convention have ceased. We have received all the benefit from it which it is capable of conferring. It is prolific of evils in the future. The "imperium in imperio" which it establishes has hitherto been innocuous, because it has been without permanent population to act upon. Population sets its evil principles in action. We have had this convention in force for twenty-seven years. Under it we have not approximated nearer a peaceable and satisfactory termination of the controversy than when it began. If England has advanced somewhat in that direction, we have receded. We are not likely to lessen our demands with increased and increasing power to support our pretensions. If it is continued twenty-seven years longer, I cannot perceive why the reasons for a still further continuance of it will be less cogent than now. And the history of the past warrants me in the conclusion, that every day's delay diminishes the chances of a peaceful termination of the controversy. It is wise in the English Government to desire the continuance of this convention, but not in

ours. In 1818 and in 1827 neither party were prepared to colonize, to settle the country; both were prepared to use it, to hunt over it, and to trade with the Indians. The usufruct of one party in these modes was not inconsistent with that of the other. This is not now the case. We are now prepared to settle, to subdue, to cultivate it. England is not. I wish to avail ourselves of this advantage. Terminate this convention, and our settlements will give us good title. Yes, sir; a good title even to 54° 40' north, if they shall be prior in time to those of other nations, and sufficiently extensive. But, with this convention in force, we can acquire nothing by our settlements. The idea of the gentleman from South Carolina (Mr. RHETT) that the wave of population, now annually rolling on towards the Pacific from this country, furnishes a reason for the continuance of this convention, appears to my mind not only untenable, but that fact has struck me as a strong and conclusive reason for terminating it. The position is admitted by both Governments, that no act of either party, during the continuance of the convention, can in any way affect the title. You may send forth to Oregon tens of thousands of your countrymen, subdue its vast forests, improve its rivers and its harbors, cover its face with cultivated fields, build cities and towns, palaces and cottages, erect temples to learning, temples to justice, and sanctuaries to the living God, in every ten miles square of its territory, and, with this convention in force, your title will be just what it was in 1818. You would thereby increase your difficulties, produce inevitable conflicts, embarrass your future negotiations by the introduction of new elements of discord; you would have people and improvements to negotiate about, as well as waste land; and you might increase your ability to hold the country by force against your adversary; but you could not strengthen your title; it is so "nominated in the bond," and the faith of the nation is pledged to it. I would strike off these shackles; I would place the country in a position to pursue whatever policy her honor and her interest might demand, untrammelled by the now useless and injurious fetters imposed by this joint convention. There is an additional reason, growing out of this emigration of our people to Oregon, for giving this notice. It is said that seven thousand of them are already there; they had a right to go there; they have been encouraged to do so; they demand of us their birthright, the benefit of our laws, the full benefit of them; the demand is just; we ought to comply with it; this convention prevents us from doing so. I would, therefore, put an end to it. This emigration would increase but for this convention. Our people can acquire no property in the soil; permanent improvements are for that reason discour-

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aged. No man will build a house without reasonable expectations of being the undisputed master of the door. Under the existing state of things, he may be compelled to abandon his home or his country. By terminating this convention, you encourage industry and emigration, by giving security to property.

The notice ought also to be given, that we may know what the country is, and where it is. I wish to know where to place this god Terminus, who was referred to by the gentleman from Missouri, (Mr. BOWLIN.) It is important to the peace of the country, to know certainly where to place him. Our American god Terminus is somewhat different from the Roman. He has legs; yes, sir, and long ones, too; and he is likely to give us a good deal of trouble. Like the spirit of Democracy, he is progressive and aggressive. He seems to claim under the new and boundless title of "manifest destiny." He follows the pioneer and the hunter, and his tracts all point outward; he never retreats. Wherever he has a pretension of claim, he holds his title to be "clear and unquestionable." Let us fix his location quickly and firmly, or this war of opinion, this war of systems, to which gentlemen have referred, may come upon us before we are ready for it. For this reason, too, I would give the notice. I prefer that it should be given in the manner pointed out in the resolution of my friend from Alabama, (Mr. HILLIARD.) I would give the President this discretion, not to embarrass him or the question, not to evade it or to shun its responsibility, but because, in my judgment, on purely public considerations, it is the most proper, if not the only proper, mode of giving it. The Constitution confers upon him an important part of the treaty-making power. In all treaties he has the initiatory part to perform. He appoints and controls at pleasure our foreign ministers; through them he, and he alone, is fully informed of the disposition, objects, and designs of other Governments. He must therefore be the best judge of the precise time when it is most expedient to give it. If he should ascertain, for instance, that giving the notice would be unjustly seized upon as a pretext for war by Great Britain, he ought to withhold it until notice could be given to our commerce upon the seas, and until adequate forces could be raised, equipped, and advantageously disposed for the national defence. It is not an extraordinary discretion. It is simply remitting him to the full and free exercise of his ordinary constitutional powers. It is a responsibility which he has no right to evade or to shun. I would arm him with his full constitutional powers, and hold him responsible for their proper exercise; but I will not condemn him in ad-

vance, and I trust that he will neither give me or the country any just cause of complaint in the manner in which he shall discharge this duty.

Joint occupation without treaty stipulations does not necessarily produce war. We had that state of things on our northeastern frontier for above fifty years without war. We have joint and even adverse occupation, at this moment, on our southwestern frontier; and if the transactions by which we extended our boundary in that direction does not produce war, we have no cause to fear it from this source. The giving of this notice has no necessary connection with the question of war. I do not propose to give it because I believe the argument is exhausted, and the question must be submitted to the arbitrament of arms. Such is not my opinion. Every mode of peaceful settlement will still be open to both parties. And, sir, I do not hesitate to express the opinion, that the question ought to be viewed as one of boundary, and settled by negotiation, or in any other honorable way, rather than by an appeal to arms. But, sir, we have no power over the question of negotiation; we cannot control it; we must legislate for the country as we find it. Our negotiations have been terminated by our own Government, and we are informed by the President that "the extraordinary and wholly inadmissible demands of the British Government, and the rejection of the propositions made in deference alone to what had been done by (his) predecessors, and the implied obligations which these acts seemed to impose, afford satisfactory evidence that no compromise which the United States ought to accept can be effected." However that fact may be, I think it is fairly to be inferred, from this statement, that England is not likely to make any proposition which the President will accept. This is the state of facts on which we are called upon to act. Shall we abandon the rights of the country because we may differ with the President, either as to the extent or the best mode of acquiring them? I trust not, sir. This extraordinary pretension of England to put every other nation upon the strength of its own title, and to claim all the earth to which no other nation can show a good title, I will not admit. She must produce that will of Adam to which my friend from Massachusetts (Mr. WINTHROP) facetiously referred, and show the clause making her his residuary legatee, before I will even consider that pretension. America ought to belong to Americans, and if we but do our duty it will belong to them. Terminate this convention, pour your hardy, adventurous population over "all Oregon," that will give you a good title to it; then call upon the country to defend that title, and no power on earth can wrench it from the iron grasp of twenty millions of freemen. In this way you rightfully acquire all Ore-

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gon, and in no other. By pursuing this policy, you will have no war for it. England will not fight for that which does not belong to her. She has something to risk by war as well as ourselves. Her people have wept over its horrors; they now feel its burthens. She, too, doubtless appreciates the blessings of peace; the civilized world desires peace. War ought never to be sought; it is one of the greatest of national calamities; even when necessary for the defence of the highest of human objects, for nationality, for liberty, it rarely compensates the generation which wages it successfully for its terrible sacrifices; yet it cannot always be avoided; the universal judgment of mankind, in all ages, and in every country, has consigned to infamy and disgrace those men and nations who have refused to resist aggression or defend their just rights, even by the sword, when necessary. But I see nothing in this question now which renders it expedient "to prepare the heart of the nation for war." Hence, I have no appeals to make to passion or patriotism. I leave eulogies upon the prowess of my countrymen, and denunciations of Great Britain, to those who have already displayed so much zeal and ability in that service; but, as that zeal in this cause has been so often and so pointedly rebuked, here and elsewhere, I will take this occasion to say, that while I deem the extravagance of those eulogies, and the intensity of those denunciations, inappropriate to this place and this occasion, I honor and sympathise with the feelings which prompt them. They are national—American. These denunciations are but the utterance of the pent-up recollections of unmeasurable wrongs to humanity. That living dust which for so many ages was trampled under foot by the tyrants of the Old World, has here commingled harmoniously together. It has assumed a human voice, and elevated itself to property, intelligence, and a knowledge of its rights. It has achieved the glorious victory of equality; but it has neither forgotten its oppressions nor its oppressors. It is this human voice, thus elevated, stimulated by these recollections of its wrongs, its sufferings, and its deliverance, which is ever struggling, not only within these walls, but within every tenement throughout this republic, in its by-ways and in its highways, in its fields and its forests, to hurl back across the ocean wave its stern defiance to its ancient oppressors. Let it bide its time, and there will be no discord in these tones of defiance.

Yet, notwithstanding these feelings, the nation desires peace. I know my own State ardently desires it. Peace is now peculiarly necessary to her. A new career of prosperity is now opening upon her; she is almost recovered from the pecuniary disasters of the last nine years; she now fully appreciates the importance of her geographical position, and her un-

rivalled natural advantages; her agriculture is beginning to improve; her great mineral wealth is now understood, and capital and labor has already begun its development; her manufactures are prosperous, and rapidly extending themselves, giving new and profitable markets to hitherto unproductive labor, increased activity to the mechanic arts, and additional markets to her agricultural products; her internal improvements, judiciously located, skilfully and profitably managed, have already nearly connected the Atlantic with the navigable waters of the Mississippi. Peace is indispensable to the speedy development and fruition of these advantages. Therefore, peace, honorable peace, is the highest interest and most earnest wish of my native State. But her past history is her guaranty that she will never surrender her own or the nation's rights. She demands at the hands of her representatives that those rights shall be maintained temperately, as becomes a just people; firmly, as becomes a brave people. And if this course of policy should be made the pretext of unjust war, she will say, with one voice, "Let it come," and God defend the right. She demands only that the cause shall be just and sufficient. If it be the will of Great Britain that this magnificent empire, to which she has no just claim, reaching from the snow-capped peaks of the Stony mountains to the Pacific ocean, shall be consecrated to freedom by baptism in the sweat of the poor and the blood of the brave, Georgia is ready to contribute her portion of the sacrificial offering; and through weal and through woe—throughout the vicissitudes of a third conflict with our powerful and haughty adversary—I know she will display a firmness and magnanimity equal to the occasion, and as prolonged as the conflict.

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